

Town of Amherst
Zoning Board of Appeals

PROJECT APPLICATION REPORT

Applicant/

Property Owner: **WD Cows, Inc.**
134 Montague Road
Amherst, MA 01059

Nature of request: Request a Special Permit to allow the extension/alteration of a pre-existing nonconformity to minimally increase lot coverage (71.3% to 72.99%), as a result of the conveyance of land to the southerly abutter, under Section 9.22 and Section 10.38 of the Zoning Bylaw.

Project address: **134 Montague Road**

Map/parcel: 5A/139

Zoning: Commercial (COM), Neighborhood Residence (RN) zoning districts

Board members: Mark Parent - Chair, Joan O'Meara, Steve Judge

Staff members: Brandon Toponce, Senior Planner; Maureen Pollock: Associate Planner, Rob Morra, Building Commissioner

BACKGROUND

WD Cows, INC. has requested a Special Permit to allow the extension/alteration of a pre-existing nonconformity to minimally increase lot coverage. This increase will be in direct response to a conveyance of land to the southerly abutter, owned by Land of Garnier LLC. The parcel of land is currently vacant and adjacent to 82 and 72 Montague to the east and south, 79-85 Sunderland Road to the west and the lease line of the new North Square development to the north. This lease line will now become the new property line for the site.

With the overall size of the property being reduced, the percentage of lot coverage increases the already nonconformity. Although Section 9.11 raises question as to whether the transfer of land can occur, Section 9.22 of the Zoning Bylaw may allow an increase through the Special Permit process provided the Board finds the increase is an expansion of the nonconforming use of the property and as long as it is found to not be more detrimental to the neighborhood.

PROPOSAL

The applicant is planning to sell an 11,306 square foot piece of land to the adjoining 47,434 square foot property to the East. With this change, the overall square footage for the 12 acre Cows property will be slightly reduced. Yet, since the parcel of land being removed is found to be undeveloped, it will impact the overall lot coverage for the remaining property. Currently the overall site has 71.3% lot coverage in the Commercial (COM) Zone and 40% in the Neighborhood

Residence (RN) Zone which does not include the recently approved North Square project. After the change the lot coverage in the RN Zone will remain the same, with the lot coverage in the COM Zone remaining 364,373 square feet, yet with a new percentage of 72.99% . According to Table 3 of the Zoning Bylaw, the maximum lot coverage in the RN Zone is 30% and the COM Zone is 70%. The applicant has provided detail on the overall lot coverage from 1967 to 2015. It appears that the overall coverage has gone from over 90% in 2009 to 71% in 2015.

No detail was submitted in relation to the easterly property owned by Land of Garner LLC. This property owner will be required to receive proper approvals by the Town for any future development.

PREVIOUS APPROVAL

In February of 2017, Beacon received approval to construct a multiuse MGL40B Project on a leased portion of the Cowles property. As part of this approval under the 40B procedures the group was able to get an approval that would increase the overall lot coverage to 81.4%. However, this increase only relates to the allowance within the leased area. Any changes on the rest of the Cowles property outside of the leased area must be looked at individually for approval. Therefore, the 81.4% does not relate to this request.

STANDARDS OF A NON-CONFORMITY

(Section 9.22, Zoning Bylaw)

An alteration that increases the degree of nonconformance is prohibited, unless another provision within the Bylaw allows an exemption. In Section 9.22 of the Bylaw, this exemption may be allowed by the ZBA with a Special Permit. This section also gives the following conditions that must be satisfied:

- A non-conforming use of a building, structure or land to be changed to a specified use **may not be substantially different in character or in its effect on the neighborhood or on property in the vicinity.** A non-conforming use of a building, structure or land to be extended, or a non-conforming building to be structurally altered, enlarged or reconstructed; provided that the Authority finds that such alteration, enlargement, or reconstruction **shall not be substantially more detrimental to the neighborhood than the existing** non-conforming use or non-conforming building.
 - **Staff Response:** In this case the property is considered non-conforming in relation to maximum lot coverage. Yet, no construction or development is occurring above and beyond what is already approved that is prompting this increase of coverage. A portion of land is being removed from the larger parcel that in return is increasing the overall percentage. The portion of land to be removed is a landlocked undeveloped area that is not found useful for the overall cowles site. Staff does not believe the increase will be more detrimental to the overall 12-acre site or to the neighborhood. As stated previously, the percentage is not changing in the RN Zone and only 2.9% in the COM Zone.

SECTION 10.38 SPECIFIC FINDINGS REQUIRED

The Board shall under Section 10.38 of the Zoning Bylaw, Specific Findings, make the findings required of all Special Permits, such that:

10.380 & 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.*

- **Staff Review:** No development is occurring to change the percentage of property coverage. All hardscape, and buildings found on the lot are existing, or have been approved by an earlier Special Permit (Beacon, 2017). Therefore, previous approvals proved the site was compatible with its surroundings.

10.382, 10.383 & 10.385 & 10.387 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features; The proposal provides convenient and safe vehicular pedestrian movement within the site, and in relation to adjacent streets, property or improvements.*

- **Staff Review:** The proposed change will not constitute a nuisance or a hazard to the surrounding neighborhood. It will also have no impact on the pedestrian or vehicular movement on or off site.

10.384 - *Adequate and appropriate facilities would be provided for the proper operation of the proposed use.*

- **Staff Review:** This finding is not applicable to this project.

10.386 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.*

- **Staff Review:** This finding is not applicable to this project.

10.387 - *The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. If the Special Permit Granting Authority deems the proposal likely to have a significantly adverse impact on traffic patterns, it shall be permitted to require a traffic impact report, and the proposal shall comply with Section 11.2437 of this Bylaw.*

- **Staff Review:** This finding is not applicable to this project.

10.388 - *The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use.*

- **Staff Review:** This finding is not applicable to this project.

10.389 - *The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water.*

- **Staff Review:** This finding is not applicable to this project.

10.390 - *The proposal ensures protection from flood hazards as stated in Section 3.228, considering such factors as: elevation of buildings; drainage; adequacy of sewage disposal; erosion and sedimentation control; equipment location; refuse disposal; storage of buoyant materials; extent of*

paving; effect of fill, roadways or other encroachments on flood runoff and flow; storage of chemicals and other hazardous substances.

- **Staff Review:** The property is not found within a designated flood zone.

10.391 - The proposal protects, to the extent feasible, unique or important natural, historic or scenic features.

- **Staff Review:** This finding is not applicable to this project.

10.392 - The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundaries. Where natural, undisturbed vegetation already exists on-site prior to site preparation and clearing, the majority of that vegetation may be retained and included as part of the buffer, along with the addition of such new plantings, selective removals, and other management of site plantings as are determined to be necessary to maintaining an effective year-round visual screen. See Section 11.3.

- **Staff Review:** The piece of land being conveyed to the easterly property owner is currently undeveloped. The new owner will be required to receive all necessary approvals if they desire to develop the parcel.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. All site lighting, including architectural, sign, and parking lot lighting, shall be kept extinguished outside of those business hours established under an approved site management plan, except for lighting determined to be necessary for site security and the safety of employees and visitors.

- **Staff Review:** This finding is not applicable to this project.

10.394 - The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes, and wetlands.

- **Staff Review:** This finding is not applicable to the project.

10.395 - The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto. Within the B-L, B-VC, B-N, COM, OP, LI and PRP Districts, and any residential zoning district where the project in question occurs within the boundaries of a National Historic Register District, the Special Permit Granting Authority shall, if it deems the proposal likely to have a significant impact on its surroundings, be permitted to use the design principles and standards set forth in Sections 3.2040 and 3.2041, 1) through 9) to evaluate the design of the proposed architecture and landscape alterations. Within the B-G and abutting B-L districts, and for any Town project within any district, the provisions of Section 3.20, Design Review, shall remain in effect.

- **Staff Review:** This finding is not applicable to this project.

10.396 - *The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.*

- **Staff Review:** This finding is not applicable to the project.

10.397 - *The proposal provides adequate recreational facilities, open space and amenities for the proposed use.*

- **Staff Review:** The entire site has already been previously approved with all open space, parking, and other adequate facilities. The removal of a small undeveloped portion of the overall 12 acres will not impact these earlier approvals.

10.398 - *The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan.*

- **Staff Review:** The Amherst Master Plan does not cover items related to this type of proposal. However, the request does meet the applicable standards found in Section 9.22 and 10.38 of the Zoning Bylaw.

CONCLUSION

Staff does not believe the change will have a negative impact to the surrounding properties or to the 12 acres owned by Cowls which the portion of land is being removed from. However, the recently approved North Square project received a waiver for the approximate 10% additional lot coverage increase through the Comprehensive Permit process as a result of the new development. The proposed increase by this application along with the recently approved development will likely have a bearing on potential future development on the property that proposes an increase in lot coverage. If the Board decides to approve the proposed extension, the following conditions of approval could be included as part of the final decision.

POSSIBLE CONDITIONS OF APPROVAL

1. Any further expansion of lot coverage on property shall require a special permit.
2. No further expansion of the lot coverage on the property shall be permitted.
3. The unauthorized alterations of private playground along Cowls Road shall be removed within 30 days of the issuance of this permit.